

IN THE U.S. PATENT AND TRADEMARK OFFICE

In re application of

Emile LOPEZ

Conf. 4673

Application No. 10/588,763

Group 1774

Filed October 4, 2006

Examiner Andrew JANCA

METHOD AND DEVICE FOR HEATING WORN ROAD COATING MATERIALS

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

April 21, 2011

Sir:

Appellant requests a pre-appeal brief review of the final rejection in the above-identified application. A Notice of Appeal is filed herewith. The review is requested for the reasons advanced on the attached sheets.

Respectfully submitted,

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Reasons In Support Of Request For Review

A pre-appeal brief review is respectfully requested because the rejections of the independent claims include a clear factual error, or in the alternative a legal error, as explained below.

Claims 5, 7, and 9 are pending and were rejected as anticipated by BIRDSEYE 2,419,876. Claims 1-4, 6, 8, and 10-14 have been canceled.

The first chamber in BIRDSEYE does not have means for heating of the radiant type that is arranged to cause worn road coatings to be recycled to reach a first temperature between 105 and 130°C and to render bitumen therein viscous. The chamber in BIRDSEYE is arranged to heat organic material to remove moisture. There is no disclosure in BIRDSEYE that the chamber is arranged to heat worn road coatings, comprised in part of inorganic materials, to render bitumen therein viscous. BIRDSEYE does not disclose that the chamber is arranged to handle viscous material. By contrast, the material in BIRDSEYE is separated and scattered - opposite rendered viscous - to permit drying.

Indeed, a problem in recycling road coatings is warming the bitumen so that it wraps each of the stones in the aggregate of the worn road coating. The bitumen should not be too runny as this would make a subsequent agglutination step impractical.

Subsequently, the material needs to be heated to a higher temperature to permit spreading. BIRDSEYE faces none of these problems and one of skill in the art would not learn from this reference how they may be solved.

Further, it is not seen that BIRDSEYE discloses the claimed means for agglutinating the heated worn road coatings. Agglutination is the act of uniting by glue or other tenacious substance; the state of being thus united; adhesion of parts. BIRDSEYE merely discloses that loose material is moved by roll 22 onto auxiliary conveyor 27. There is no indication in this reference that materials are to be adhered to each other. Indeed, any agglutination would be counter to the purpose of BIRDSEYE which is to separate and dry the material, not unite them so as to create a mass that would be difficult to dry (column 6, lines 14-25). BIRDSEYE provides agitators 25, 35, 45 whose purpose is to scatter the material; why agglutinate at the outlet of the first chamber if the material is to be scattered immediately thereafter? The reference does not disclose means for agglutination and one of skill in the art would not include such means in the BIRDSEYE device.

The Examiner argues that the BIRDSEYE apparatus "would seem to be capable of doing the job of Applicant's claimed apparatus" and that a new use for an old product is not patentable.

However, the Examiner is impermissibly picking and choosing parts of the BIRDSEYE apparatus, out of context. This is a legal error. With regard to the means for agglutinating, the Examiner notes that BIRDSEYE transfers dried particulate materials from one heating chamber to another and that a pair of opposing rollers with a tight gap between them may scatter dry particulate materials but would tend to agglutinate sticky viscous particles. But BIRDSEYE teaches that the particles are dried, with particular emphasis on removing surface moisture from the food product (column 1, lines 46-52.) The particles will not be sticky, as presumed by the Examiner, and they will not agglutinate because BIRDSEYE removes the surface moisture. The Examiner has made a factual error.

BIRDSEYE dehydrates quickly by heating and simultaneously blowing air to extract the moisture. The reference clearly teaches the opposite of agglutination, and one of skill in the art would not learn from BIRDSEYE that means for agglutinating the heated worn road coatings are to be disposed at an outlet of the first chamber.

In view of this, it is believed that the rejection of record includes a clear factual and/or legal error and cannot be sustained and must be reversed, and such is respectfully requested.